



STEVEN L. BESHEAR
GOVERNOR

EXECUTIVE ORDER

2010-823
September 30, 2010

Secretary of State
Frankfort
Kentucky

By virtue of the authority vested in me by Section 12.210(1) of Kentucky Revised Statutes and as Governor of the Commonwealth of Kentucky, I, Steven L. Beshear, do hereby approve an employment contract between **Garmer & Prather, PLLC**, Lexington, Kentucky and the **Office of the Attorney General** as outlined in the attached contract.

Please enter this Executive Order upon the Executive Journal and file the attached Contract with the Executive Order.


STEVEN L. BESHEAR
Governor


TREY GRAYSON
Secretary of State

RECEIVED AND FILED

DATE 9/30/10

TREY GRAYSON

SECRETARY OF STATE

COMMONWEALTH OF KENTUCKY

BY *R. Adles*



Commonwealth of Kentucky

CONTRACT

Show Doc ID number on all packages, invoices and correspondence.

Doc Description: legal ser to assist w/investigation of pharmaceutical co.

Doc ID No: PON2 040 1100000729 1

Procurement Folder: 1875716

Procurement Type: Personal Service Contract

Administered By: Bonnie Howell

Cited Authority: FAP111-43-00-L

Telephone: 502-696-5621

Issued By: Bonnie Howell

Garmer & Prather, PLLC

141 North Broadway

Lexington
US

KY 40501

1	Legal Services- Pharmaceutical Companies	0.00	0.00000	0.01	0.01
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Extended Description

The Office of the Attorney General (ôOAGô) sought proposals for legal services to assist the OAG with investigation and potential litigation involving Merck & Co. Inc., manufacturer of the pharmaceutical drug Vioxx and any other potentially liable parties. This includes any party involved in the manufacture, marketing, promotion and sale of the pharmaceutical drug Vioxx (Rofecoxib). The contract includes but is not limited to, assistance related to the OAG's investigation concerning Vioxx and determination whether the manufacturer and/or related entities have engaged in fraudulent, unfair, false, misleading or deceptive acts and practices that have caused injury to the Kentucky Medicaid program, Kentucky Medicare Part B beneficiaries and Kentucky consumers. The investigation includes, but is not limited to, whether the aforementioned entities improperly marketed the drug Vioxx in such a manner as to induce medical practitioners to prescribe Vioxx despite the fact that Vioxx presented substantial risk of adverse side effects upon patients taking same. In addition, the investigation involves the alleged failure of the manufacturer and potentially other entities to warn of the substantial risk of serious medical side effects to which patients taking Vioxx would be exposed including, but not limited to, heart attacks, stroke and blood clots. Based on the alleged unlawful conduct, the Commonwealth and Kentucky consumers have paid millions of dollars for a medication creating a significant medical risk and/or injury for patients receiving same, all in violation of state consumer protection statutes, state Medicaid fraud statutes and common law requirements. .

This contract was awarded on the basis of background and experience and the contingency fees and percentages proposed by the firm to be withheld from any settlement award resulting from this litigation.

The Office of the Attorney General has specific authority under HB1 to contract with attorneys on a contingency basis.

421793

OFFICE OF THE ATTORNEY GENERAL

700 CAPITAL AVENUE

ROOM 34, CAPITAL BUILDING

FRANKFORT

US

KY 40601

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PERSONAL SERVICES CONTRACT

Office of the Attorney General For Legal Services Frankfort, KY

This document constitutes a Personal Service Contract between the firm Garmer and Prather, PLLC hereinafter referred to as the Contractor to furnish those services as described herein for the Commonwealth of Kentucky, Office of the Attorney General, hereafter referred to as OAG.

DESCRIPTION OF SERVICES REQUIRED

The Kentucky Office of the Attorney General ("OAG") seeks proposals for legal services to assist the OAG with investigation and potential litigation involving **Merck & Co. Inc.**, manufacturer of the pharmaceutical drug Vioxx and any other potentially liable parties. This includes any party involved in the manufacture, marketing, promotion and sale of the pharmaceutical drug Vioxx (Rofecoxib). The RFP includes but is not limited to, assistance related to the OAG's investigation concerning Vioxx and determination whether the manufacturer and/or related entities have engaged in fraudulent, unfair, false, misleading or deceptive acts and practices that have caused injury to the Kentucky Medicaid program, Kentucky Medicare Part B beneficiaries and Kentucky consumers. The investigation includes, but is not limited to, whether the aforementioned entities improperly marketed the drug Vioxx in such a manner as to induce medical practitioners to prescribe Vioxx despite the fact that Vioxx presented substantial risk of adverse side effects upon patients taking same. In addition, the investigation involves the alleged failure of the manufacturer and potentially other entities to warn of the substantial risk of serious medical side effects to which patients taking Vioxx would be exposed including, but not limited to, heart attacks, stroke and blood clots. Based on the alleged unlawful conduct, the Commonwealth and Kentucky consumers have paid millions of dollars for a medication creating a significant medical risk and/or injury for patients receiving same, all in violation of state consumer protection statutes, state Medicaid fraud statutes and common law requirements.

The OAG retains the right at all times to direct the litigation in all respects, including but not limited to, whether and when to initiate litigation, against whom actions will be taken, the claims to be made in said litigation, approval and/or rejection of settlements and the amount and type of damages to be requested.

Legal services will include, but may not be limited to:

- Performing an assessment of the OAG's proposed litigation against **Merck & Co. Inc.**

- Assuming lead role in investigating and, if warranted, preparing litigation against Merck & Co. Inc. and other potentially responsible entities, if any. Offeror will conduct all phases of investigation and litigation including responding to motions, including motions to dismiss;

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Contractor may retain local counsel if needed with the approval of the OAG; drafting and answering discovery propounded to the Commonwealth; tracking documents obtained in discovery; coordinate litigation with other states and the federal government to promote, to the extent beneficial, a unified approach to these cases; taking of depositions; defending depositions noticed by the defendants; preparing Commonwealth witnesses for depositions; responding to motions for summary judgment or other pretrial dispositive motions; identification of experts to testify in favor of the Commonwealth; preparation of expert witnesses for deposition or trial testimony; assessing the strength of legal arguments propounded by the litigants; preparation of legal arguments on motions; dealing with discovery disputes; represent the Commonwealth in trial or in any settlement negotiations that may occur; represent the Commonwealth in responding to post-trial motions; represent the Commonwealth in the appeal of any judgment or verdict rendered in any such action(s) and, if applicable, the remand from appeal(s).

Preserving and making available to the Office all pertinent records. When the contract is completed or if the contract is completely or partially terminated for whatever reason, all records relating to the work shall be preserved and made available to the Office for a period of at least five (5) years from the date of final statement or until the litigation is completed, whichever occurs last.

Warranting that any representations made by them in the proposed agreement are true and accurate; that the Offeror is in all ways in compliance with state and federal laws which may govern the subject matter of this Agreement; and that the party executing this Agreement on the Offeror's behalf is duly authorized to do so.

Shall not have any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder.

Shall use software compatible with the Office including Summation or Concordance and Microsoft Office.

Shall provide detailed information regarding hours worked, services performed and costs incurred in said litigation on a quarterly basis and upon request.

GENERAL CONDITIONS

The Kentucky Office of the Attorney General is issuing this contract. The Office is the only state agency authorized to change, modify, amend, alter, or clarify the specifications, terms and conditions of this contract.

This contract, will expire June 30, 2012 as required by law but may be renewed for up to two (2) additional 2 year terms with the agreement of both parties.

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KENTUCKY PROCUREMENT INFORMATION

Offerors are advised that this personal service contract must comply with all applicable provisions of KRS 45A and KRS 12.210 prior to becoming effective.

This contract is invalid until properly approved and executed by the Finance and Administration Cabinet.

Certification Regarding Debarment and Suspension

In accordance with Federal Acquisition Regulation 52.209-5, the Vendor shall certify, by signing the Solicitation, that to the best of its knowledge and belief, the Vendor and/or its Principals is (are) not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any State or Federal agency.

"Principals", for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of subsidiary, division, or business segment, and similar positions.

Contract Components and Order of Precedence

The Commonwealth's acceptance of the Contractor's offer in response to the Solicitation, indicated by the issuance of a Contract Award, shall create a valid Contract between the Parties consisting of the following:

- Any written Agreement between the Parties;
- Any Addenda to the Solicitation;
- The Solicitation and all attachments thereto.
- PSC1 Personal Service Contract Clauses;
- Any Best and Final Offer;
- Any clarifications concerning the Contractor's proposal in response to the Solicitation;
- The Contractor's proposal in response to the Solicitation.

In the event of any conflict between or among the provisions contained in the Contract, the order of precedence shall be as enumerated above.

PERSONAL SERVICES CONTRACT STANDARD TERMS AND CONDITIONS

Whereas, the first party, the state agency, has concluded that either state personnel are not available to perform said function, or it would not be feasible to utilize state personnel to perform said function; and

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Whereas, the second party, the contractor, is available and qualified to perform such function; and

Whereas, for the abovementioned reasons, the state agency desires to avail itself of the services of the second party;

NOW THEREFORE, the following terms and conditions are applicable to this contract:

Effective Date:

This agreement is not effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been submitted to the Legislative Research Commission, Government Contract Review Committee ("LRC").

Payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the Secretary.

Renewals:

Upon expiration of the initial term, the contract may be renewed in accordance with the terms and conditions in the original solicitation. Renewal shall be subject to prior approval from the Secretary of the Finance and Administration Cabinet or his authorized designee and the LRC Government Contract Review Committee in accordance with KRS 45A.695 and KRS 45A.705, and contingent upon available funding.

LRC Policies:

Pursuant to KRS 45A.725, LRC has established policies which govern rates payable for certain professional services. These are located on the LRC webpage (<http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>) and would impact any contract established under KRS 45A.690 *et seq.*, where applicable.

Choice of Law and Forum:

All questions as to the execution, validity, interpretation, construction and performance of this agreement shall be governed by the laws of the Commonwealth of Kentucky. Furthermore, the parties hereto agree that any legal action which is brought on the basis of this agreement shall be filed in the Franklin County Circuit Court of the Commonwealth of Kentucky.

Cancellation:

The state agency shall have the right to terminate and cancel this agreement at any time not to exceed thirty (30) days' written notice served on the contractor by registered or certified mail.

Funding Out Provision:

The state agency may terminate this contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The state agency shall

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provide the contractor thirty (30) calendar days written notice of termination of the contract

Reduction in Contract Worker Hours

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the contract will be reduced by the amount specified in that document.

Authorized to do Business in Kentucky:

The contractor affirms that it is properly authorized under the laws of the Commonwealth of Kentucky to conduct business in this state and will remain in good standing to do business in the Commonwealth of Kentucky for the duration of any contract awarded.

Invoices for fees:

The contractor shall maintain supporting documents to substantiate invoices and shall furnish same if required by state government.

Travel expenses, if authorized:

The contractor shall be paid for no travel expenses unless and except as specifically authorized by the specifications of the contract.

Other expenses, if authorized herein:

The contractor shall be reimbursed for no other expenses of any kind, unless and except as specifically authorized within the specifications of the contract.

If the reimbursement of such expenses is authorized, the reimbursement shall be only on an out-of-pocket basis. Request for payment of same shall be processed upon receipt from the contractor of valid, itemized statements submitted periodically for payment at the time any fees are due. The contractor shall maintain supporting documents that substantiate every claim for expenses and shall furnish same if requested by state government.

Invoicing for fee: the contractor's fee shall be original invoice(s) and shall be documented by the contractor. The invoice(s) must conform to the method described in the specifications of the contract.

Invoicing for travel expenses: the contractor must follow instructions described in the specifications of the contract. Either original or certified copies of receipts must be submitted for airline tickets, motel bills, restaurant charges, rental car charges, and any other miscellaneous expenses.

Invoicing for miscellaneous expenses: the contractor must follow instructions prescribed in the specifications of the contract. Expenses submitted shall be documented by original or certified

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copies.

Purchasing and specifications:

The contractor certifies that he will not attempt in any manner to influence any specifications to be restrictive in any way or respect nor will he attempt in any way to influence any purchasing of services, commodities or equipment by the Commonwealth of Kentucky. For the purpose of this paragraph and the following paragraph that pertains to conflict-of interest laws and principles, "he" is construed to mean "they" if more than one person is involved and if a firm, partnership, corporation, or other organization is involved, then "he" is construed to mean any person with an interest therein.

Conflict-of-interest laws and principles:

The contractor certifies that he is legally entitled to enter into this contract with the Commonwealth of Kentucky, and by holding and performing this contract will not be violating either any conflict of interest statute (KRS 45A.330-45A.340, 45A.990, 164.390), or KRS 11A.040 of the executive branch code of ethics, relating to the employment of former public servants.

Campaign finance:

The contractor certifies that neither he/she nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of this contract, has contributed more than the amount specified in KRS 121.056(2), to the campaign of the gubernatorial candidate elected at the election last preceding the date of this contract. The contractor further swears under the penalty of perjury, as provided by KRS 523.020, that neither he/she nor the company which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to him/her or the company which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

Certification (Access to Records)

The state agency certifies that it is in compliance with the provisions of KRS 45A.695. "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The contractor, as defined in KRS 45A.030(9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884

Social security: (check one)

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_____ the parties are cognizant that the state is not liable for social security contributions pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

_____ the parties are cognizant that the state is liable for social security contributions pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

Violation of tax and employment laws:

KRS 45A.485 requires the contractor to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the contractor shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the contractor shall be in continuous compliance with the provisions of those statutes which apply to the contractor's operations, and that the contractor's failure to reveal a final determination as described above or failure to comply with the above statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract and the contractor's disqualification from eligibility for future state contracts for a period of two (2) years.

Contractor must check one:

_____ the contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.

_____ the contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). A list of such determination(s) is attached.

Discrimination:

Discrimination (because of race, religion, color, national origin, sex, age, or disability) prohibited. This section applies only to contracts utilizing federal funds, in whole or in part. During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex or age. The contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The contractor agrees to provide, upon request, needed reasonable accommodations. The contractor will take affirmative action to ensure that applicants are employed and

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that employees are treated during employment without regard to their race, religion, color, national origin, sex, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, age or disability.

3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

4. The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

The contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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APPROVALS:

This contract is subject to the terms and conditions as stated. By affixing signatures below, the parties agree that electronic approvals may serve as electronic signatures. In addition, the parties verify that they are authorized to bind this agreement between parties and that they accept the terms of the agreement.

1st Party:

Signature

Title

Printed Name

Date

2nd Party:

Signature

Title

Printed Name

Date

Approved as to form and legality:

Attorney